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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Michael Z. Hermalyn and FVP, LLC,

Plaintiffs,

vs.

DraftKings, Inc.,

Defendant.

Case No. 2:24-cv-00918

**PLAINTIFFS' NOTICE OF
MOTION, MOTION TO REMAND,
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

*[Filed concurrently with Winiarski
Decl.; [Proposed] Order]*

Date: March 4, 2024¹
Time: 9:00 a.m.
Judge: Hon. Mark C. Scarsi
Courtroom: 7C
Trial Date: None Set

¹ Requested to be advanced to February 5, 2024, at 9:00 a.m. in this same Court in Plaintiffs' currently filed Ex Parte Application to Shorten Time.

1 **TO THE COURT, ALL PARTIES, AND ALL ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 4, 2024, at 9:00 a.m., or February
3 5, 2024, at 9:00 a.m. as requested in Plaintiffs' concurrently filed Ex Parte
4 Application to Shorten Time, or as soon thereafter as counsel may be heard, in
5 Courtroom 7C of the above-entitled court, located at 350 W. 1st Street, 7th Floor,
6 Los Angeles, California 90012, the Honorable Mark C. Scarsi presiding, Plaintiffs
7 Michael Z. Hermalyn and FVP, LLC ("Fanatics VIP") (collectively with Mr.
8 Hermalyn, "Plaintiffs") shall move, and hereby do move, under 28 U.S.C. § 1447
9 for an order remanding this action to state court. This motion is timely because
10 Defendant DraftKings, Inc. filed its notice of removal on February 1, 2024, and
11 because there is no federal court jurisdiction and remand is mandatory, as set forth
12 below. *See* 28 U.S.C. § 1447(c).

13 This Motion is based on this Notice of Motion, the Memorandum of Points
14 and Authorities filed herewith, the concurrently-filed Declaration of Gregg
15 Winiarski and Proposed Order filed herewith, all pleadings and papers of record on
16 file in this case, and such additional authority and argument as may be presented at
17 or before the time this motion is submitted and heard.

1 DATED: February 2, 2024

Respectfully submitted,

2 MUNGER, TOLLES & OLSON LLP

3
4
5 By: /s/ Brad D. Brian

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16 FVP, LLC

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27 ² Signed electronically by Brad D. Brian with the concurrence of Michael B.
28 Carlinsky, pursuant to L.R. 5-1(i)(3).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Michael Z. Hermalyn (“Hermalyn”), a California resident, recently commenced employment in Los Angeles, California with Plaintiff FVP, LLC (“Fanatics VIP,” and collectively with Mr. Hermalyn, “Plaintiffs”). Contrary to black-letter California law, including recent legislation that specifically precludes the enforcement of restrictive covenants against California residents *regardless of where or when the contract was signed* (Cal. Bus. & Prof. Code § 16600.5), Defendant DraftKings, Inc. (“DraftKings”), Mr. Hermalyn’s former employer, is insisting that onerous, far-reaching non-compete and non-solicitation agreements preclude his employment by Fanatics VIP.

California’s newly-effective laws that amend and expand Section 16600 encourage individuals to move to California and give them the right to sue both: (a) to invalidate restrictive covenants; and (b) to enjoin their former employer from suing outside California to enforce such covenants. As a California resident and employee, Mr. Hermalyn availed himself of this new express protection, together with Fanatics VIP, filing suit yesterday in California state court against DraftKings for declaratory judgment, violation of Section 16600.5, and unfair competition. Mr. Hermalyn also sought on an ex parte basis for a temporary restraining order (“TRO”) and order to show cause to enjoin DraftKings from seeking to enforce the illegal restraints on trade, including by any attempt to sue in Massachusetts.

Mere hours before that TRO could be heard today, DraftKings rushed to remove Plaintiffs’ case on the sole basis that there is purportedly diversity jurisdiction over Plaintiffs’ state-law claims under 28 U.S.C. § 1332(a). But, in its hasty removal, DraftKings got it wrong. Because there is no diversity jurisdiction in this case, the Court must remand it to state court.

Fanatics VIP is a California-formed and headquartered Limited Liability Company, but its sole member is a Nevada corporation. (Decl. of Gregg Winiarski,

¶¶ 5-7.) Nevada is also where DraftKings is incorporated. ECF No. 1 at 9. Under controlling law, that means that both DraftKings and Fanatics VIP are citizens of Nevada. *See* 28 U.S.C. § 1332(c)(1) (“[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business...”); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a citizen of every state of which its owners/members are citizens.”).

Complete diversity is required for federal court jurisdiction. 28 U.S.C. § 1332; *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005) (“[W]e have read the statutory formulation ‘between ... citizens of different States’ to require complete diversity between all plaintiffs and all defendants.”). Because both Plaintiff Fanatics VIP and Defendant DraftKings are citizens of Nevada, there is not complete diversity between all plaintiffs and all defendants. Remand of this case back to California Superior Court is required. 28 U.S.C. § 1447(c); *ARCO Env’t Remediation, LLC v. Dep’t of Health & Env’t Quality of Mont.*, 213 F.3d 1108, 1113 (9th Cir. 2000) (when “a case is improperly removed, the federal court must remand the action because it has no subject-matter jurisdiction to decide the case”).

II. STATEMENT OF FACTS

A. The Nature of Plaintiffs’ Claims

From September 2020 to January 2024, Mr. Hermalyn worked for DraftKings. ECF No. 1-5 (Hermalyn Decl.) ¶ 8. DraftKings is incorporated in Nevada and headquartered in Massachusetts. Mr. Hermalyn worked out of DraftKings’ New York City office, when he was not working remotely, and lived in New Jersey at the time. *Id.* ¶ 9. Although he never resided in Massachusetts, was never employed in Massachusetts, and never worked out of DraftKings’ Massachusetts office, DraftKings demanded that Mr. Hermalyn—as a condition of employment and in order to receive a substantial aspect of Mr. Hermalyn’s

1 compensation—execute multiple onerous and unlawful non-competition and non-
2 solicitation agreements. *Id.* ¶¶ 12-14.

3 On February 1, 2024, Mr. Hermalyn resigned from DraftKings and accepted
4 an offer for employment from Fanatics VIP. *Id.* ¶ 3. Fanatics VIP is a limited
5 liability company formed in California, with headquarters in Los Angeles,
6 California. *Id.* Mr. Hermalyn serves as President of Fanatics VIP and the Head of
7 Fanatics’ Los Angeles office. *Id.* Fanatics VIP is a California-based affiliate of the
8 global digital sports platform Fanatics Holdings, Inc.

9 Mr. Hermalyn moved to California for this opportunity and has been a
10 resident of California since January 29, 2024. *Id.* ¶¶ 2, 5. Since that time, he has
11 (1) leased an apartment in California with the intention of buying a home later this
12 year; (2) taken and passed the California driver’s exam, obtaining a California
13 driver’s license; (3) purchased a car in California; (4) registered to vote in
14 California; and (5) begun to obtain a physician in California. *Id.* ¶ 2. His wife and
15 children are also joining him in California following the completion of the current
16 academic school year, and they have taken steps to enroll their daughters in schools
17 and camps in Los Angeles for the upcoming summer and school year. *Id.* Mr.
18 Hermalyn’s position with Fanatics VIP requires that he live and work in person in
19 Los Angeles. *Id.* ¶ 5.

20 **B. Procedural History**

21 The morning of February 1, 2024, after Mr. Hermalyn resigned from
22 DraftKings and accepted his offer from Fanatics VIP, he and Fanatics VIP filed a
23 complaint in the Superior Court of Los Angeles, for: (1) declaratory relief that
24 Mr. Hermalyn’s noncompetition and nonsolicitation agreements with DraftKings are
25 unlawful; (2) injunctive relief restraining DraftKings from attempting to enforce
26 those clearly unlawful provisions; and (3) a claim under California’s Unfair
27 Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

1 The claims in this lawsuit are simple and straightforward under California
2 law. Black-letter California law provides that “*every* contract by which anyone is
3 restrained from engaging in a lawful profession, trade, or business *of any kind* is to
4 that extent *void*.” Cal. Bus. & Prof. Code § 16600(a) (emphasis added). California
5 “void[s] the application of any noncompete agreement in an employment context, or
6 any noncompete in an employment contract, no matter how narrowly tailored,” *id.*
7 § 16600(b)(1), as the state has a “strong public policy of protecting the right of its
8 citizens to pursue any lawful employment and enterprise of their choice.” *AMN*
9 *Healthcare, Inc. v. Aya Healthcare Servs., Inc.*, 28 Cal. App. 5th 923, 935 (2018).
10 California courts prohibit exactly the kind of non-compete, client non-solicit, and
11 employee non-solicit agreements that DraftKings executed with Mr. Hermalyn. *See*,
12 *e.g., Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 955 (2008) (voiding non-
13 competition agreement); *AMN Healthcare*, 28 Cal. App. 5th at 936 (voiding
14 employee non-solicitation agreement); *Dowell v. Biosense Webster, Inc.*, 179 Cal.
15 App. 4th 564, 575 (2009) (voiding customer non-solicitation agreement).

16 In light of the clear entitlement to relief under California law and the
17 immediate risk of DraftKings attempting to unlawfully disrupt Mr. Hermalyn’s new
18 employment, Mr. Hermalyn gave DraftKings notice of his intent to seek emergency
19 *ex parte* relief in state court for a temporary restraining order and order to show
20 cause why a preliminary injunction should not issue to restrain any attempt to
21 enforce DraftKings’ void contracts and interfere with Mr. Hermalyn’s ability to
22 perform his new employment. Mr. Hermalyn provided this notice immediately after
23 resigning the morning of February 1.

24 In the face of decades of case law and a crystal-clear statute providing that the
25 at-issue contracts are unlawful, DraftKings could have eliminated the dispute in this
26 case by representing that it would not attempt to enforce the unlawful provisions.
27 Instead, lacking any reasonable arguments on the merits to oppose the emergency
28 relief sought, DraftKings removed the case to federal court during the late night

1 hours of February 1, thereby automatically divesting the state court of jurisdiction
 2 mere hours before it was to rule on Mr. Hermalyn's TRO request.

3 **III. LEGAL STANDARD**

4 **A. Removal and Remand**

5 A defendant may remove to federal court "any civil action brought in a State
 6 court of which the district courts of the United States have original jurisdiction." 28
 7 U.S.C. § 1441(a). However, the Ninth Circuit "strictly construe[s] the removal
 8 statute against removal jurisdiction." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
 9 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right of
 10 removal in the first instance." *Id.* "The 'strong presumption' against removal
 11 jurisdiction means that the defendant always has the burden of establishing that
 12 removal is proper." *Id.*

13 "If at any time before final judgment it appears that the district court lacks
 14 subject matter jurisdiction, the case *shall* be remanded." 28 U.S.C. § 1447(c)
 15 (emphasis added). When "a case is improperly removed, the federal court *must*
 16 remand the action because it has no subject-matter jurisdiction to decide the case."
 17 *ARCO Env't Remediation*, 213 F.3d at 1113 (emphasis added); *see also Int'l*
 18 *Primate Prot. League v. Admins. of Tulane Educ. Fund*, 500 U.S. 72, 87-88 (1991)
 19 ("Since the district court had no original jurisdiction over this case, ... a finding that
 20 removal was improper deprives that court of subject matter jurisdiction and obliges
 21 a remand under the terms of § 1447(c).").

22 **B. Federal Court Jurisdiction**

23 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life*
 24 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A federal district court has original
 25 jurisdiction over federal questions, 28 U.S.C. § 1331, and may also hear cases under
 26 the diversity jurisdiction granted in 28 U.S.C. § 1332. As relevant here, diversity
 27 jurisdiction requires the controversy to exceed the value of \$75,000 and be between
 28 "citizens of different states." 28 U.S.C. § 1332(a)(1). The Supreme Court has held

1 that section 1332(a)’s “statutory formulation ‘between ... citizens of different States’
 2 ... require[s] complete diversity between all plaintiffs and all defendants.” *Lincoln*
 3 *Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005).

4 **IV. ARGUMENT**

5 Remand is required because there is no basis for federal jurisdiction in this
 6 case.

7 **A. There Is No Jurisdiction Based on Federal Claims**

8 There is no question that this case involves only California law claims. ECF
 9 No. 1-3 (state court complaint). Indeed, Plaintiffs’ complaint involves *novel*
 10 California law claims, based on statutes that took effect just on January 1, 2024. *Id.*
 11 The California Legislature and courts have expressly stated that these new statutes,
 12 and the related statutory and case law framework of which they are a part, reflect
 13 California public policy that is of paramount importance to the state and its citizens
 14 and that has been in place for decades. *See, e.g.*, S.B. 699, Reg. Sess. (Cal. 2023-
 15 24), §§ 1(c)-(f) (“California’s public policy provides that every contract that
 16 restrains anyone from engaging in a lawful profession, trade, or business of any kind
 17 is, to that extent, void, except under limited statutory exceptions. ... This freedom of
 18 employment is paramount to competitive business interests. ... The California
 19 courts have been clear that California’s public policy against restraint of trade law
 20 trumps other state laws when an employee seeks employment in California, even if
 21 the employee had signed the contractual restraint while living outside of California
 22 and working for a non-California employer.”); *Application Group, Inc. v. Hunter*
 23 *Group, Inc.*, 61 Cal. App. 4th 881, 900-01 (1998) (“California has a strong interest
 24 in protecting the freedom of movement of persons whom California-based
 25 employers (such as [Plaintiff]) wish to employ to provide services in California,
 26 regardless of the person’s state of residence or precise degree of involvement in
 27 California projects, and we see no reason why these employees’ interests should not
 28 be ‘deemed paramount to the competitive business interests’ of out-of-state as well

as in-state employers.”). This underscores why it is proper for a California state court to be the forum to interpret and apply these new California statutes in the first instance.

B. There Is No Jurisdiction Based on Diversity Because DraftKings and Fanatics VIP Are Both Nevada Citizens

DraftKings’ *sole* asserted basis for federal jurisdiction is diversity between the parties. ECF No. 1 at 11 (notice of removal). DraftKings cannot meet its burden to prove that there is complete diversity between Plaintiffs Mr. Hermalyn and Fanatics VIP and Defendant DraftKings for two reasons.

First, DraftKings’ removal is procedurally defective. When a limited liability company, or LLC, is a named party, as is Plaintiff Fanatics VIP, the removing party must include allegations regarding the citizenship of each of the LLC’s members. Absent such allegations, its notice of removal is *per se* defective. *See Buschman v. Anesthesia Bus. Consultants LLC*, 42 F. Supp. 3d 1244, 1249 (N.D. Cal. 2014) (“Because the notice of removal contained no allegations regarding the citizenship of each of Defendant’s members, it fails to establish that complete diversity between the parties exist and, thus, that this Court had subject matter jurisdiction of this dispute.”). The reason for this rule is clear: to properly weigh a removal motion involving any LLC, a federal court “needs to know each member’s citizenship, and if necessary each member’s members’ citizenships.” *SD-3C, LLC v. Barun Elecs. Co., Ltd.*, No. 19-cv-01895-LHK, 2019 WL 4411977, at *3 (N.D. Cal. Sept. 16, 2019) (citation omitted).

Here, however, DraftKings’ Notice of Removal entirely ignored the citizenship of Fanatics VIP’s members. Instead, DraftKings merely alleges Fanatics VIP’s place of incorporation and principal place of business without any regard to the citizenship of Fanatics VIP’s members. *See* Def.’s Notice of Removal at 9 (“Fanatics VIP is a ‘limited liability company formed in California, with headquarters in Los Angeles, California.’”). That is not enough to support its

1 motion. “This failure alone is enough to support remand.” *Wagner v. Spire Vision*
 2 *LLC*, No. 13–00054 YGR, 2013 WL 941383, at *1 (N.D. Cal. Mar. 8, 2013).

3 ***Second***, as a factual matter, DraftKings cannot show the *complete* diversity
 4 between the parties required for a federal court to exercise diversity jurisdiction.
 5 *Lincoln Prop.*, 546 U.S. at 89 (explaining that “the statutory formulation ‘between ...
 6 citizens of different States’ ... require[s] complete diversity between all plaintiffs
 7 and all defendants”); *see also Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067
 8 (9th Cir. 2001) (“Section 1332 requires complete diversity of citizenship; each of
 9 the plaintiffs must be a citizen of a different state than each of the defendants.”).

10 For purposes of assessing complete diversity of jurisdiction, a corporation
 11 “shall be deemed to be a citizen of every State and foreign state by which it has been
 12 incorporated and of the State or foreign state where it has its principal place of
 13 business.” 28 U.S.C. § 1332(c)(1). The principal place of business is “the place
 14 where [the] corporation’s officers direct, control, and coordinate the corporation’s
 15 activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). In other words, this
 16 is “the place where the corporation maintains its headquarters – provided that the
 17 headquarters is the actual center of direction, control, and coordination, i.e., the
 18 ‘nerve center,’ and not simply an office where the corporation holds its board
 19 meetings.” *Id.* at 93.

20 A limited liability company is deemed to be a citizen of each and every state
 21 where its members are citizens. *See Johnson*, 437 F.3d at 899 (“[A]n LLC is a
 22 citizen of every state of which its owners/members are citizens.”).

23 In this case, Defendant DraftKings is undisputedly a citizen of Nevada, where
 24 it is incorporated, and Massachusetts, where it has its principal place of business. 28
 25 U.S.C. § 1332(c)(1); ECF No. 1-3 (state court complaint), ECF No. 1 at 9 (notice of
 26 removal).

27 Plaintiff Fanatics VIP is a limited liability company formed in California,
 28 with headquarters in Los Angeles, California. (Decl. of Gregg Winiarski, ¶ 5.) FVP

1 LLC's sole member is FVP, Inc., a Nevada corporation that is based in Los Angeles,
 2 California. *Id.* ¶ 7. FVP, Inc. is a Nevada (and California) citizen under section
 3 1332. Under controlling Ninth Circuit law, then, Plaintiff Fanatics VIP is a citizen
 4 of both California and Nevada, because its members are citizens of California and
 5 Nevada.

6 Diversity jurisdiction requires *complete* diversity. Because both Plaintiff
 7 Fanatics VIP and Defendant DraftKings are citizens of Nevada, there is not
 8 complete diversity among the parties and therefore no diversity jurisdiction. *Lincoln*
 9 *Property Co.*, 546 U.S. at 89.

10 **C. Without a Basis for Jurisdiction, the Court Must Remand**

11 Remand is mandatory in this case because there is no federal jurisdiction.
 12 The statute is clear: "If at any time before final judgment it appears that the district
 13 court lacks subject matter jurisdiction, the case *shall* be remanded." 28 U.S.C.
 14 § 1447(c) (emphasis added). When a court lacks original jurisdiction over a case
 15 because there is no federal question or diversity jurisdiction, the case is improperly
 16 removed and the federal court *must* remand the action, as it has no subject matter
 17 jurisdiction to decide the case. *See, e.g., ARCO Env't Remediation*, 213 F.3d at
 18 1113; *see also Int'l Primate Prot. League*, 500 U.S. at 88-89.

19 In this case, DraftKings has failed to establish a basis for jurisdiction: There
 20 is undisputedly no federal question at issue in the complaint (ECF No. 1-3 (state
 21 court complaint)), and the facts set forth above establish that there is not complete
 22 diversity between all plaintiffs and defendants. Courts have remanded cases on
 23 similar bases where the removing defendant did not establish complete diversity
 24 based on citizenship of limited liability company citizenship. *See Mauricio v.*
 25 *Suncrest Health Servs.*, No. 5:22-cv-02698-EJD, 2023 WL 2026530, at *3 (N.D.
 26 Cal. Feb. 15, 2023) (remanding action to state court based on lack of diversity
 27 between defendant and plaintiff LLC); *SD-3C*, 2019 WL 4411977, at *3 (remanding
 28 case to state court because, once LLC's members were considered, the parties were

1 not diverse); *Wagner*, 2013 WL 941383, at *1 (remanding action to state court
 2 because “Defendants have failed to allege adequately the citizenship of all the
 3 parties to this action. Limited liability companies, or LLCs, are like partnerships in
 4 that they are a citizen of every state where its owners and members are citizens.”).

5 Diversity was the sole basis Defendant invoked for removal. It has failed to
 6 meet its burden to prove that removal was proper because the facts establish that
 7 there not complete diversity among the parties. The Court must remand because it
 8 lacks subject matter jurisdiction.

9 **D. Mr. Hermalyn Is a California Citizen**

10 In DraftKings’ removal papers, it contends that Mr. Hermalyn is not a citizen
 11 of California because a DraftKings employee *thinks* Mr. Hermalyn still resides in
 12 New Jersey. *See* ECF No. 1 at 8 (notice of removal). DraftKings is wrong, but this
 13 does not matter for purposes of this Court’s lack of jurisdiction. As explained
 14 above, and regardless of Mr. Hermalyn’s citizenship, there is not complete diversity
 15 in this case because both Plaintiff Fanatics VIP and Defendant DraftKings are
 16 Nevada citizens, thereby destroying the requirement for complete diversity.

17 But to ensure the record is clear, Plaintiff Mr. Hermalyn *is* a citizen of
 18 California. He is a U.S. citizen and domiciled in California. ECF No. 1-5
 19 (Hermalyn Decl.) ¶ 2. That means that he is a citizen of California for purposes of
 20 jurisdiction. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.
 21 1983); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

22 The facts related to Mr. Hermalyn’s residence were set forth in detail in his
 23 complaint and ex parte papers filed in state court. ECF No. 1-3, 1-4. They were
 24 supported by a sworn declaration from Mr. Hermalyn. ECF No. 1-5. Specifically,
 25 he has already (1) leased an apartment in California with the intention of buying a
 26 home later this year; (2) taken and passed the California driver’s exam, obtaining a
 27 California driver’s license; (3) purchased a car in California; (4) registered to vote in
 28 California; and (5) begun to obtain a physician in California. *Id.* ¶ 2. His wife and

1 children are also joining him in California following the completion of the current
 2 academic school year, and they have taken steps to enroll their daughters in schools
 3 and camps in Los Angeles for the upcoming summer and school year. *Id.* Mr.
 4 Hermalyn accepted employment with a California employer, Fanatics VIP, and his
 5 position with Fanatics VIP requires that he live and work in person in Los Angeles.
 6 *Id.* Mr. Hermalyn is therefore a citizen of California. *Kanter v. Warner-Lambert*
 7 *Co.*, 265 F.3d 853, 857 (9th Cir. 2001); *Kary v. Combs*, 2017 WL 6888715, at *1
 8 (C.D. Cal., Aug. 28, 2017) (holding that a natural person’s declaration and driver’s
 9 license were dispositive in a dispute regarding that person’s state citizenship).

10 **E. Plaintiffs Are Entitled to Their Reasonable Attorney’s Fees and**
 11 **Costs Incurred as a Result of DraftKings’ Baseless Removal**

12 28 U.S.C. § 1447(c) provides that “[a]n order remanding the case may require
 13 payment of just costs and any actual expenses, including attorney fees, incurred as a
 14 result of the removal.” As the United States Supreme Court has instructed, “the
 15 standard for awarding fees should turn on the reasonableness of the removal” such
 16 that “an award of attorneys’ fees is appropriate where the removing party lacked an
 17 objectively reasonable basis for seeking removal.” *Martin v. Franklin Capital*
 18 *Corp.*, 546 U.S. 132, 141 (2005). District courts have “wide discretion” in awarding
 19 fees, and may do so if the removal was “wrong as a matter of law.” *Ansley v.*
 20 *Ameriquist Mortg. Co.*, 340 F.3d 858, 864 (9th Cir. 2003).

21 Here, there was no “objectively reasonable basis” for DraftKings’ removal.
 22 Where “the issues presented . . . as a basis for removal jurisdiction are not novel”
 23 and the “impropriety of the removal is apparent,” an award of attorney’s fees and
 24 costs is warranted. *Shamoun v. Peerless Importers, Inc.*, No. 03 CV 1227(NG),
 25 2003 WL 21781954, at *4 (E.D.N.Y. Aug. 1, 2003). Accordingly, Plaintiffs
 26 respectfully request that the Court exercise its discretion and award their fees and
 27 costs incurred as a result of DraftKings’ manipulative and baseless removal.
 28

1 **V. CONCLUSION**

2 For the reasons stated above, there is no federal jurisdiction in this case and
3 the Court must remand it to state court.

4
5 DATED: February 2, 2024

Respectfully submitted,

6 MUNGER, TOLLES & OLSON LLP
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27 ³ Signed electronically by Brad D. Brian with the concurrence of Michael B.
28 Carlinsky, pursuant to L.R. 5-1(i)(3).

Local Rule 11-6.1 Certificate of Compliance

The undersigned, counsel of record for Michael Z. Hermalyn, certifies that this brief contains 3,833 words, which complies with the word limit of L.R. 11-6.1.

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